



9110-04-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG-2013-0983]

RIN 1625-AA09

Drawbridge Operation Regulation; Thames River, New London, CT

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: The Coast Guard is changing the operating schedule that governs the Amtrak Bridge across the Thames River at mile 3.0, at New London, Connecticut. The bridge owner, National Passenger Railroad Corporation (Amtrak), submitted a request to allow the Amtrak Bridge to open to 75 feet above mean high water instead of the full bridge opening at 135.3 feet above mean high water, unless a full bridge opening is requested. It is expected that this change to the regulations will create more efficiency in drawbridge operations while continuing to meet the reasonable needs of navigation.

DATES: This rule is effective [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: Documents mentioned in this preamble are part of docket USCG-2013-0983. To view documents mentioned in this preamble as being available in the docket, go to <http://www.regulations.gov>, type in the docket number in the "SEARCH" box and click "SEARCH." Click Open Docket Folder on the line associated with this rulemaking. You may also visit the Docket Management Facility in Room W12-140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or e-mail Ms. Judy Leung-Yee, Project Officer, First Coast Guard District Bridge Branch, 212-514-4330, judu.k.leung-yee@uscg.mil. If you have questions on viewing the docket, call Cheryl Collins, Program Manager, Docket Operations, telephone 202-366-9826.

SUPPLEMENTARY INFORMATION:

A. Regulatory History and Information

On September 11, 2014, we published a notice of proposed rulemaking (NPRM) entitled "Drawbridge Operation Regulation; Thames River, New London, CT" in the Federal Register (79 FR 54244). We received two comments regarding the proposed rule. No public meeting was requested, and

none was held.

B. Basis and Purpose

The Amtrak Bridge across the Thames River, mile 3.0, at New London, Connecticut, has a vertical clearance in the closed position of 29.4 feet at mean high water and 31.8 feet at mean low water. The drawbridge operation regulations are listed at 33 CFR 117.224. The waterway users are both recreational and commercial vessels.

The owner of the bridge, National Passenger Railroad Corporation (Amtrak), requested an exception to the requirement to fully open the bridge to its full 135.3 foot height above mean high water when not required for a vessel to pass under safely. Amtrak submitted the request to the Coast Guard to change the drawbridge operation regulations to allow the Amtrak Bridge to open to 75 feet above mean high water for smaller vessels which comprise the majority of the requested openings. The Amtrak Bridge will perform a full bridge opening of 135.3 feet above mean high water when requested to do so.

The existing regulations require the bridge to open immediately on signal for public vessels of the United States and commercial vessels; except that, when a train scheduled to cross the bridge without stopping has passed the Midway, Groton, or New London stations and is in motion

toward the bridge, the bridge must not be opened for the passage of any vessel until the train has crossed the bridge. The bridge shall open as soon as practicable for all other vessels but no later than 20 minutes after the signal to open is given.

We analyzed the bridge opening data for the Amtrak Railroad Bridge during calendar year 2013, comparing the number of bridge openings to 135.3 feet and the number of bridge openings to 75 feet for each month of the year.

The bridge opening breakdown for 2013 is as follows:

| Month | Total Openings | Openings to 135 feet | Openings to 75 feet |
|-----------|-------------------|-------------------------|------------------------|
| January | 98 | 17 | 81 |
| February | 58 | 8 | 50 |
| March | 62 | 2 | 60 |
| April | 83 | 12 | 71 |
| May | 220 | 40 | 180 |
| June | 255 | 38 | 217 |
| July | 257 | 42 | 215 |
| August | 243 | 34 | 209 |
| September | 227 | 26 | 201 |
| October | 216 | 25 | 191 |

| | | | |
|----------|-------|-----|-------|
| November | 84 | 8 | 76 |
| December | 97 | 6 | 91 |
| TOTALS | 1,900 | 258 | 1,642 |

Out of the total 1900 bridge openings, only 13.57% were to the 135.3 foot elevation and the remaining 86.43% were to the 75 foot elevation.

As a result, the Coast Guard believes that allowing the Amtrak Railroad Bridge to open to 75 feet, except when a request to open to 135.3 feet is received, is reasonable based on the low number of requests to open to 135 feet and to match actual operations.

The Coast Guard will also alter the navigation lighting requirements to better meet the needs of navigation at this drawbridge as a result of this final rule.

In accordance with 33 CFR § 118.85, the center of the navigational channel under the operable span will be marked by a range of two green lights when the vertical span is open to navigation.

The Coast Guard will allow one solid green light and one flashing green light when the bridge is at the 75 footmark and two solid green lights when the bridge is fully opened to 135.3 feet.

We believe this final rule will continue to meet the reasonable needs of navigation while also improving drawbridge efficiency of operation.

Under this final rule, the draw will open on signal to 75 feet above mean high water, except when a full opening to 135.3 feet above mean high water is requested. The bridge tender is aware of the vertical clearance from the low steel chord of the bridge to the water level by a sensor displaying distance on the Operator Control Panel housed in the Drawbridge Control Room at the bridge. A selector switch is placed in the 75 foot position or full lift (135.3 feet) position by the bridge tender prior to operations depending on the vessel requirements."

Discussion of Comments, Changes and the Final Rule

The Coast Guard received two comments in response to the notice of proposed rulemaking. One of the two comment letters was submitted in error for another bridge located in Florida. The second comment letter questioned if the regulation change was considered not a "significant energy action" because it saves time or saves energy by opening to 75 feet instead of 135.3 feet. Executive Order 13211 defines "significant energy action." One prong of the definition is that the regulatory action needs to be

significant per Executive Order 12866. This regulation does not meet the threshold for a significant regulatory action and therefore cannot be considered a "significant energy action." While the change in opening levels will save both time and energy, the analysis for a "significant energy action" is based on definition in E.O. 13211.

The single comment letter pertinent to the Amtrak Bridge was not an objection or in favor of the rule change, as a result, no changes have been made to this final rule.

C. Regulatory Analyses

We developed this rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on these statutes or executive orders.

1. Regulatory Planning and Review

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, as supplemented by Executive Order 13563, Improving Regulation and Regulatory Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of Executive Order 12866 or under section 1 of Executive Order 13563. The Office of Management and Budget has not reviewed it under those Orders. We believe that this rule is not a significant regulatory action

because the Amtrak Bridge will continue to open fully for any vessel upon request.

2. Impact on Small Entities

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601-612, as amended, requires federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard received no comments from the Small Business Administration on this rule. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

This rule will have no effect on small entities for the following reason: The Amtrak Bridge will open fully for all vessel traffic at all times upon request.

3. Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions

concerning its provisions or options for compliance, please contact the person listed in the "FOR FURTHER INFORMATION CONTACT", above.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1-888-REG-FAIR (1-888-734-3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

4. Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520).

5. Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of

government. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

6. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the "FOR FURTHER INFORMATION CONTACT" section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

7. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

8. Taking of Private Property

This rule will not cause a taking of private property or otherwise have taking implications under Executive Order

12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

9. Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

10. Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and would not create an environmental risk to health or risk to safety that might disproportionately affect children.

11. Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

12. Energy Effects

This action is not a "significant energy action" under Executive Order 13211, Actions Concerns Regulations That Significantly Affect Energy Supply, Distribution, or Use.

13. Technical Standards

This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

14. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023-01 and Commandant Instruction M16475.1D, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321-4370f), and have concluded that this action is one of a category of actions which do not individually or cumulatively have a significant effect on the human environment. This rule simply promulgates the operating regulations or procedures for drawbridges. This rule is categorically excluded, under figure 2-1, paragraph (32)(e), of the Commandant Instruction.

Under figure 2-1, paragraph (32)(e), of the Commandant Instruction, an environmental analysis checklist and a

categorical exclusion determination are not required for this rule.

List of Subjects in 33 CFR Part 117

Bridges.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 117 as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 33 CFR 1.05-1; Department of Homeland Security Delegation No. 0170.1.

2. Revise § 117.224 to read as follows:

§ 117.224 Thames River.

The draw of the Amtrak Bridge, mile 3.0, at New London, shall operate as follows:

- (a) The draw shall open on signal to 75 feet above mean high water for all vessel traffic unless a full bridge opening to 135.3 feet above mean high water is requested.
- (b) The 75 foot opening will be signified by a range light display with one solid green light and one flashing green light and the full 135.3 foot opening will be signified with two solid green range lights.
- (c) The draw shall open on signal for public vessels of the United States and commercial vessels; except that, when a train scheduled to cross the bridge without stopping has passed the Midway, Groton, or New London stations and is in motion toward the bridge, the lift span shall not be opened until the train has crossed the bridge.
- (d) The draw shall open on signal as soon practicable for all other vessel traffic but no later than 20 minutes after the signal to open is given.

Dated: December 8, 2014

L.L. Fagan
Rear Admiral, U.S. Coast Guard
Commander, First Coast Guard District

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